IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mohanlal Rajpurohit v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.1455/1997
under Article 226 of the Constitution of India.

Date of Order : 29th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Mohanlal Rajpurohit, petitioner present in person.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

This petition for writ is directed against the order dated 20.2.1995 passed by Member, Board of Revenue, Rajasthan, Ajmer exercising powers under Section 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”); order dated 22.4.1996 passed by the Secretary to the Government of Rajasthan, Department of Revenue, Group-

I, exercising powers under Rule 23 of the Rules of 1958 and the order dated 31.3.1999 passed under the orders of Governor of Rajasthan under Rule 34 of the said Rules.

The facts necessary for adjudication of present petition are as follows:-

The petitioner was served with a memorandum dated 10.6.1993 under Rule 17 of the Rules of 1958 alleging therein that he while occupying the office of Tehsildar-cum-officiating Sub Registrar, Siwana irregularly returned the sale deed executed by Shri Modmal in favour of Shri Kailashdan due to deficiency of stamp duty. The act of the petitioner was treated in violation of instructions issued by Government of Rajasthan time to time and also in violation of provisions of Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as “the Act of 1899”). The petitioner submitted an explanation in response to the memorandum referred above. The petitioner explained the circumstances in which the instrument was returned to the party concerned. The petitioner also stated that the document was returned by him while exercising sound discretion vested with him by force of provisions of Section 47-A of the Act of 1899.

The disciplinary authority after receiving the explanation submitted by the petitioner also sought advise and comments from the Inspector General, Registration and Stamps, who also opined that prima facie the allegation levelled against the petitioner stands proved but no malice appears on part of the petitioner in returning the instrument. The disciplinary authority accordingly passed an order dated 20.2.1995 imposing a penalty of censure upon the petitioner. The disciplinary authority while imposing penalty upon the petitioner also observed that the State Government is contesting a writ petition fortifying the stand of the delinquent employee to the extent that Sub Registrar is vested with a discretion either to return the document presented for registration or to refer the same to the Collector (Stamp).

The petitioner being aggrieved by the order passed by the disciplinary authority preferred an appeal, that too was rejected by the appellate authority by order dated 22.4.1996.

A review petition was filed by the petitioner giving challenge to the orders passed by the appellate authority and the disciplinary authority but the same was not decided for quite a petty long time, therefore, the preferred the present writ petition. During pendency of writ petition the review petition

too was rejected by reviewing authority by order dated 31.3.1999. The order passed by the reviewing authority was subsequently taken on record.

No reply to the writ petition has been filed.

Heard the petitioner present in person and counsel for the respondents.

Precisely the contention of the petitioner is that he has not committed any misconduct as under Section 47-A of the Act of 1899 a broad discretion vests with the Registrar either to register the instrument having deficiency of stamp duty and to refer the same to Collector (Stamp) for determination for market value and to assess to charge the duty in conformity with such determination or to return the instrument to the party concerned. He exercised his discretion and returned the document to the party concerned. The party to whom the instrument was returned being aggrieved by the same filed a writ petition before this Court which came to be decided by an order dated 11.8.1994 as a consequence of an agreement, however, in the said writ petition the stand of the Government was that the Registrar vests with a discretion either to return the document to the party or to refer it to the Collector (Stamp) after registering the same as prescribed under Section 47-A of the Act of 1899. According to the petitioner in

view of position above no misconduct was committed by him and he has been erroneously subjected to a minor penalty.

Counsel for the respondents State while defending the orders impugned urged that in normal course a Registrar is required to refer a document deficiently stamped to the Collector (Stamp) in accordance with Section 47-A of the Act of 1899.

From perusal of orders impugned it is abundantly clear that even according to the respondents there was no malicious intention on the part of the petitioner while returning the instrument deficiently stamped. The petitioner returned the document to the party concerned bonafidely with a belief that by force of provisions of Section 47-A of the Act of 1899 a discretion vests with him either to return the document to the party concerned or to register the same and then to refer to the Collector (Stamp) for determination of stamp duty and for charging the same. When a delinquent employee acts with all bonafides and exercises a statutory jurisdiction vested with him, in that event he does not commit any misconduct. While discharging administrative functions an authority is required to exercise his powers and while examining such powers, there may be minor errors, the higher authorities in these circumstances must examine the intentions of the

officer concerned. If an action is taken maliciously or with gross negligence then the officer should certainly be punished but if the action is taken bonafidely, may it be in minor and unintentional violation of instructions of the higher authorities, it requires to be pardoned. In the present case the disciplinary authority in quite unambiguous terms reached at the conclusion that the petitioner was acting bonafidely and there was no malicious intention on his part while returning the document. As such, in my considered opinion no misconduct was committed by the petitioner. It is also pertinent to note that the State Government also contested a writ petition fortifying the view of the petitioner to the extent that under Section 47-A of the Act of 1899 a broad discretion vests with the Registrar either to return the instrument to the party concerned or to register the same and then to refer the same to the Collector for determination of deficient stamp duty and charge the same. This fact also proves that the respondent State too considered that the petitioner while working as Sub-Registrar acted well within his jurisdiction by returning the instrument sought to be registered being suffered with deficiency of stamp. In totality of circumstances I am is of the considered opinion that no misconduct was committed by the petitioner and, therefore, he has been erroneously punished.

Accordingly this petition for writ is allowed. The orders passed by the disciplinary authority dated 20.2.1995; dated 22.4.1996 passed by the appellate authority and dated 31.3.1999 passed by the reviewing authority are hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.